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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

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Amendment to the Commission's Rules
Regarding a Plan for Sharing
the Costs of Microwave Relocation

WT Docket No. 95-157
RM-8643

**REPLY OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA") hereby submits its Reply to the Petitions for Reconsideration filed in the above-captioned docket.¹ In its Opposition to the Petitions, PCIA urged the Commission to reject the proposals of several incumbents to weaken the self-relocation safeguards the Commission has adopted. The Commission devised several protection mechanisms to prevent abuse of its rules, including limiting the links subject to self-relocation, applying the cost sharing rules, establishing depreciation and monetary caps for self-relocating incumbents, and requiring self-relocating incumbents to obtain an independent third-party appraisal of compensable relocation costs.²

These protections serve several purposes. First, they prevent incumbents who were displaced by PCS deployment from "gaming" the system so as to obtain unjustified reimbursement through self-relocation. Second, they serve as a substitute for marketplace

¹ PCIA opposes the Petitions for Reconsideration filed by the American Petroleum Institute, WT Docket No. 95-157 (filed Apr. 16, 1997), South Carolina Public Service Authority, WT Docket No. 95-157 (filed Apr. 17, 1997), and UTC, The Telecommunications Association, WT Docket No. 95-157 (filed Apr. 17, 1997) seeking reconsideration of the Commission's Second Report and Order (rel. Feb. 27, 1997) ("Order").

² Order, ¶¶ 25-28.

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negotiations with a PCS entity as a mechanism to ensure that incumbents do not receive compensation for more than the cost of a comparable system. As PCIA has explained, even these mechanisms may not be sufficient to prevent incumbents from misusing the self-relocation mechanism, so further weakening them would be an invitation for abuse.

I. INCUMBENTS WHO SELF-RELOCATED PRIOR TO ADOPTION OF THE ORDER ARE NOT ENTITLED TO REIMBURSEMENT.

In their comments on the Petitions, neither UTC nor Southern Company gives any additional or persuasive reasons why the Commission should weaken these protections.³ Although both UTC and the Southern Company support allowing incumbents who self-relocated after April 5, 1995 to obtain reimbursement, neither supplies any evidence that such relocations were caused by PCS deployment. Southern Company claims that “twenty-six (26) paths had to be self-relocated because there were inoperable without those other paths relocated by PCS licensees.”⁴ However, this statement is not at all credible. First, during the voluntary negotiation period, Southern Company was not required to relocate any links, so if it negotiated relocations which left part of its system inoperable, it was irresponsible. Second, the Commission’s requirements of a comparable relocated system would not have been met by allowing a relocation which left other parts of the system inoperable. Thus, Southern

³ Comments of UTC on Petitions for Reconsideration/Clarification, WT Docket No. 95-157 (filed May 20, 1997) (“UTC Comments”); Comments of Southern Company in Support of the Petitions for Reconsideration, WT Docket No. 95-157 (filed May 20, 1997) (“Southern Comments”).

⁴ Southern Comments at 3.

Company had no obligation to authorize such a relocation during either the voluntary or the mandatory negotiation periods.

For its part, UTC claims that “incumbents who have been faced with the ‘no-win’ situation of deciding whether to delay relocation until a whole-system replacement agreement can be reached .. or subject[ing] their microwave system to an unacceptable level of risk” are “particularly deserving of reimbursement for relocation costs.”⁵ However, UTC fails to explain how incumbents were placed in a “no-win” situation by the Commission’s rules. During the voluntary negotiation period, which ended April 5, 1997, incumbents were not even required to negotiate with PCS providers. In fact, this imbalance in negotiation positions caused some incumbents to abuse the process by demanding excessive premiums.⁶ Therefore, to pretend that early self-relocating incumbents did so for anything but independent business reasons is disingenuous. In addition, neither UTC nor Southern Company explains how an incumbent who self-relocated over two years ago will be able to provide a reliable independent third-party appraisal of comparable relocation costs.

II. DEPRECIATION IS A NECESSARY SAFEGUARD TO PREVENT ABUSE OF THE SELF-RELOCATION MECHANISM.

Both UTC and Southern Company state that the Commission should not apply the depreciation formula to self-relocating incumbents because other incentives, such as the risk of not obtaining reimbursement and the third-party appraisal requirement are sufficient incentives

⁵ UTC Comments at 3.

⁶ See, e.g., Comments of the Personal Communications Industry Association, WT Docket No. 95-157 at 2-8 (filed Nov. 30, 1995).

to minimize relocation costs.⁷ In addition, UTC suggests that incumbents benefit only marginally from relocation since the entire process is more of a burden than a benefit and therefore they should not be subject to depreciation.⁸ Neither of these claims is consistent with the Commission's findings.

In its Order, the Commission determined that depreciation was a necessary incentive to ensure that self-relocating incumbents minimize their relocation costs since they will not have to engage in negotiations with PCS providers.⁹ As PCIA has explained, requiring incumbents to pay at least a small portion of their relocation costs is the best, though not entirely effective, incentive for incumbents to comply with the rules. Moreover, UTC's claim that incumbents receive minimal benefit from relocation¹⁰ fails to note that incumbents who are relocated or self-relocate are in most cases receiving a brand new system with new equipment at no cost. This is hardly a marginal benefit.

III. REIMBURSEMENT SHOULD NOT BE REQUIRED FOR SELF-RELOCATIONS TO LEASED FACILITIES.

Although UTC supports allowing reimbursement for relocations to leased facilities,¹¹ it fails to note that there are insufficient safeguards. PCIA does not oppose incumbents choosing

⁷ UTC Comments at 5; Southern Comments at 6.

⁸ UTC Comments at 5.

⁸ UTC Comments at 5.

⁹ Order, ¶ 27.

¹⁰ UTC Comments at 4-5.

¹¹ UTC Comments at 6-7.

to relocate to leased facilities or using other facilities as a replacement for their 2 GHz facilities. However, these creative solutions are best left to negotiations between PCS providers and incumbents.

If self-relocating incumbents are allowed to relocate to leased facilities, they will be able to undermine the reliability of the third-party appraisal required by the Commission. When a self-relocating incumbent builds a new system, it will be much easier for the independent third party to determine what upgrades in equipment the incumbent included, whereas if the incumbent leases facilities, the appraisal will only be an estimate of the cost of a new system and may not take into account actual savings that could be realized if a new system were built. Therefore, since the third-party estimate is one of the critical incentives for incumbents to minimize costs, self-relocations to leased facilities should not be subject to cost sharing.

IV. CONCLUSION

In its decision to allow incumbent self-relocation, the Commission adopted a number of safeguards to help prevent the potential for abuse and ensure that incumbents have incentives to minimize relocation costs. These protections are critical to preventing PCS providers from paying unreasonable relocation costs and raising the price of PCS services to the public. Therefore, PCIA urges the Commission to deny these petitions and leave these safeguards in place.

Respectfully submitted,

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May 30, 1997

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